DOCUMENT RESUME

ED 250 267 SO 016 043

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TITLE Spare the Rod: Due Process re School Discipline. Second Edition. A Student's Lesson Plan [and] A Teacher's Lesson Plan [and] A Lawyer's Lesson Plan.
INSTITUTION Constitutional Rights Foundation, Los Angeles, Calif.
PUB DATE 82
NOTE 37p.; For similar lesson plans on different legal issues, see SO 016 038-046.
AVAILABLE FROM Constitutional Rights Foundation, 1510 Cotner Ave., Los Angeles, CA 90025 ($4.95).
PUB TYPE Guides - Classroom Use - Guides (For Teachers) (052) -- Guides - Classroom Use - Materials (For Learner) (051)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Case Studies; Conflict Resolution; *Court Litigation; *Discipline; Discipline Policy; *Due Process; *Educational Legislation; Learning Activities; *Legal Education; Legal Problems; Lesson Plans; Public Schools; Role Playing; *School Law; Secondary Education; Simulation; Student Rights; Units of Study
IDENTIFIERS Goss v Lopez; *Law Related Education

ABSTRACT

One of a series of secondary level teaching units presenting case studies with pro and con analyses of particular legal problems, the document presents a student's lesson plan, a teacher's lesson plan, and a lawyer's lesson plan designed to expose students to the concept of procedural due process with particular reference to the Supreme Court's decision concerning due process requirements in the context of school discipline. Although similar in content, the student and teacher lesson plans are presented separately to facilitate individual or small group work by students and to provide teachers with additional background information. Prior to a lawyer's visit to the classroom, students participate in a mini-role simulation entitled "Suspension." Students then discuss legal statutes concerning suspension, expulsion, and corporal punishment and role play a series of case studies. The lawyer's lesson plan centers around procedural due process requirements in the case, "Goss versus Lopez" and includes thought provoking questions and discussion concerning resolution of the dispute and other related case studies. (LH)

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SPARE THE ROD

Due Process re School Discipline

A Student's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub
1982

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SPARE THE ROD
(Due Process re School Discipline)

STUDENT'S LESSON PLAN

INTRODUCTORY UNIT

Instructions For The Student

You will witness several students in the class role-play a suspension hearing. Read the case below. Follow the play so that you can take part in the discussion following the role-play.

SUSPENSION

A Role-Play Simulation

David Gerber is suspended from school for having been involved in a fight in a school lavatory in which another student suffered a fractured skull. Several students were present when the fight occurred. One of those students immediately went to the principal's office and informed him of what was happening. The principal rushed to the lavatory and arrived to find the injured student on the floor and David standing near him with his clothes dishevelled. The principal accused David of being responsible for the injured student's condition and gave David an opportunity to explain what had happened. David said that he had been attacked by the injured student and that there were other students who had rushed out of the bathroom at the beginning of the fight who would support his story. Other students who were actually in the lavatory when the principal arrived, however, contradicted David's story and said that David had been the aggressor. The principal did not believe David and suspended him on the spot. On the following day, David's parents received a written notice of David's suspension in the mail. The notice informed them that David had been suspended from school for five days for fighting in the men's lavatory. They were further advised that a meeting was scheduled for Wednesday at 10:00 a.m. with the principal to hear the charges and discuss the matter. Mr. and Mrs. Gerber were requested to be present. The suspension notice was signed by the principal.

INSTRUCTIONS FOR ROLE-PLAY

1. Select students to play the following roles: The Principal, David Gerber, Mr. Gerber, Mrs. Gerber.

2. Setting: The Principal's Office, Tuesday morning, 10:00 a.m.

3. The Principal will explain that under the Education Code an oral or written notice of suspension and the reasons for the suspension must be given the student and the parents. He will explain that the meeting was being held because David had denied that he had attacked the other student and, therefore, was entitled to a hearing with his parents present.

4. The Principal will relate to David's parents what had occurred in the lavatory and why he suspended David.

5. The parents will respond.

6. David will tell his side of the story.

7. The Principal will ask questions of David.

8. The parents will ask David questions.

9. The class will be asked to decide whether the facts presented by the Principal warrant suspension. The class should decide whether David's explanation supports his denial of having committed the offense.

CLASS DISCUSSION AFTER ROLE-PLAY

When the simulation has been concluded, discuss the proceedings with the class. Use the following questions as a springboard to your discussion.

1. Do you think David had a fair hearing?

2. Do you feel that a student should have legal representation at such a hearing? Why? Why not?

3. Do you think a student would have fairer treatment if another student were present as observer?

4. Do you think that David should be permitted to bring witnesses to testify for him? Why? Why not?

5. Why do you think the Supreme Court decided that students have the right to notice of suspension and a hearing after such a notice is given?

6. Do you think these requirements interfere with the Principal's authority in the school?

LAWYER-IN-THE-CLASSROOM UNIT

Read the following case. Consider the facts and issues carefully. Study the questions below and be prepared to discuss them with the visiting lawyer.

THE CASE

Dwight Jones was a student at Central High School and was present in the lunchroom when a large number of students created a disturbance, causing significant damage to property in the lunchroom. This disturbance followed several weeks of unrest at the school and school officials were anxious to put an end to such unruly behavior. The principal asked the few teachers who were present in the lunchroom for the names of those students involved. Dwight Jones was among 75 students identified, all of whom were immediately suspended from school for a period of five days as a result of their alleged involvement in the lunchroom incident. Dwight maintains that he was merely an innocent bystander and took no part in the incident. However, he was never given an opportunity to present his side of the story, but was merely informed by the principal of the decision to suspend him.

One day following the incident, Dwight's parents were notified in writing by the principal of his suspension and were invited to attend a conference to discuss Dwight's future at the school. The fact of Dwight's suspension was noted in his permanent records and any colleges to which he might apply for admission or employers to whom he might apply for a job will be informed, pursuant to school rules, of the fact that he had been suspended in connection with the lunchroom incident.

QUESTIONS

A. Does a student have a right to some form of legal protections before he can be suspended from school? If he does have such a right, what form should such procedures take?

B. Who has an interest in the issues? Which of these issues are or should be protected by law? Why?

C. Do you think that a student has a right to some form of notice and a hearing before he can be suspended from school? Why?

D. Do you think that the school has deprived Dwight of any rights as guaranteed under the Due Process clause of the 14th Amendment to the Constitution which states that the state shall not . . . "deprive any person

of . . . liberty or property without due process of law"? Should a principal have an absolute right to suspend a student for 10 days or less? Do you think that children are entitled to the same constitutional rights as adults? Why? Why not?

E. If you were the court, how would you resolve this case? Why?

FOLLOW-UP UNIT

The members of the class will engage in a role-play activity which will involve them in an expulsion, suspension or corporal punishment situation, which will give the students an opportunity to use the information gained from the lawyer's visit. Read the article on "Expulsion, Suspension and Corporal Punishment" the teacher will pass out to the class. Read your case carefully. Consider the interests of the individual you role-play and present the arguments you believe such person would present in your case.

Instructions For The Observer

The person who is the observer should not participate in the preparation for the role-play.

While the simulations are being performed in your small group, the observer should watch what is happening and be prepared to answer the following questions:

A. Was the student treated fairly? Why? Why not?

B. Were any constitutional rights violated? If a similar situation arose outside of school, would the action taken be unlawful?

C. What was the attitude of each person in the skit? What motivated each person in the skit to act as he did? Was the role-play realistic?

After the role-play, the observer will act as discussion leader of his/her small group.

Instructions For The Players

After role-playing is completed, students in each small group should discuss what happened with the observer acting as leader.

Following these discussions, those who had roles of students should lead off a general class discussion by describing the events that occurred in their group.

CASE 1

Bill Haskins is a high school student who was reported to the principal for wearing his hair longer than school regulations allowed. Bill's parents, Bill and the teacher are called into the principal's office to discuss the matter.

CASE 2

Carol Stern had written an article on birth control for the high school paper. The journalism teacher referred the article to the principal who decided that it should not be printed. Carol complained to her parents who then made an appointment to meet with the principal and teacher.

CASE 3

James Collier wanted to discuss the possible presidential impeachment in the U.S. History class. The teacher refused to allow the discussion, and James challenged her decision. He was then reported to the principal's office for insubordination.

CASE 4

The eleventh-grade class voted to hold a demonstration to protest a cutback in school funds for athletic programs by carrying signs in front of the school during lunch and after class hours. The class officers and the advisor meet with the principal to discuss the proposed demonstration.

CASE 5

The school librarian, fed up with the large number of overdue books, had the custodian open all the school lockers to retrieve library books that were overdue. In Nancy Lee's locker, the librarian noticed a packet of marijuana. He reported this to the principal. Nancy and her parents are called into the principal's office where the police are already discussing the matter with the librarian and the principal.

CASE 6

Steve Gertman's teacher reported Steve to the principal for talking in class for the fifth time in one week. The principal, on receiving the fifth report, called Steve into his office and announced that he is suspended from school pending a parent conference. Steve, his parents, the teacher and the principal meet to discuss the suspension.

CASE 7

Martha Martin had been caught smoking in the bathroom. She was brought into the vice-principal's office and paddled. Later that day, Martha and her parents meet with the vice-principal and teacher who found Martha smoking.

SPARE THE ROD

Due Process re School Discipline

A Teacher's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub
1982

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SPARE THE ROD
(Due Process Re School Discipline)

TEACHER'S LESSON PLAN

INTRODUCTORY UNIT

To prepare the students for a lively discussion on suspensions and expulsions with the visiting lawyer, and to provide a basis for understanding the issues that revolve around the Due Process Clause of the 14th Amendment as they pertain to students, have the class participate in the mini-role simulation, "Suspension".

Copy the Situation, Instructions, and the Questions. Distribute to the class. After the class has read the Situation, choose a "principal", a "student", and two "parents" to play the roles.

SITUATION

SUSPENSION

A Role-Play Simulation

David Gerber is suspended from school for having been involved in a fight in a school lavatory in which another student suffered a fractured skull. Several students were present when the fight occurred. One of those students immediately went to the principal's office and informed him of what was happening. The principal rushed to the lavatory and arrived to find the injured student on the floor and David standing near him with his clothes dishevelled. The principal accused David of being responsible for the injured student's condition and gave David an opportunity to explain what had happened. David said that he had been attacked by the injured student and that there were other students who had rushed out of the bathroom at the beginning of the fight who would support his story. Other students who were actually in the lavatory when the principal arrived, however, contradicted David's story and said that David had been the aggressor. The principal did not believe David and suspended him on the spot. On the following day, David's parents received a written notice of David's suspension in the mail. The notice informed them that David had been suspended from school for five days for fighting in the men's lavatory. They were further advised that a meeting was scheduled for Wednesday at 10:00 a.m. with the principal to hear the charges and discuss the matter. Mr. and Mrs. Gerber were requested to be present. The suspension notice was signed by the principal.

INSTRUCTIONS FOR ROLE-PLAY

1. Select students to play the following roles: The Principal, David Gerber, Mr. Gerber, Mrs. Gerber.

2. Setting: The Principal's Office, Tuesday morning, 10:00 a.m.

3. The Principal will explain that under the Education Code an oral or written notice of suspension and the reasons for the suspension must be given the student and the parents. He will explain that the meeting was being held because David had denied that he had attacked the other student and, therefore, was entitled to a hearing with his parents present.

4. The Principal will relate to David's parents what had occurred in the lavatory and why he suspended David.

5. The parents will respond.

6. David will tell his side of the story.

7. The Principal will ask questions of David.

8. The parents will ask David questions.

9. The class will be asked to decide whether the facts presented by the Principal warrant suspension. The class should decide whether David's explanation supports his denial of having committed the offense.

CLASS DISCUSSION AFTER ROLE-PLAY

Ask the class to discuss the following questions after the role-play has been completed.

1. Do you think David had a fair hearing?

2. Do you feel that a student should have legal representation at such a hearing? Why? Why not?

3. Do you think a student would have fairer treatment if another student were present as observer?

4. Do you think that David should be permitted to bring witnesses to testify for him? Why? Why not?

5. Why do you think the Supreme Court decided that students have the right to notice of suspension and a hearing after such a notice is given?

6. Do you think these requirements interfere with the Principal's authority in the school?

§ 10602. Grounds for Suspension and Expulsion

Continued willful disobedience, habitual profanity or vulgarity, open and persistent defiance of the authority of the school personnel, or assault or battery upon a student, upon school premises or while under the authority of school personnel, or continued abuse of school personnel, assault or battery upon school personnel, or any threat of force or violence directed toward school personnel, at any time or place shall constitute good cause for suspension or expulsion from school; however, no pupil shall be suspended or expelled unless the conduct for which he is to be disciplined is related to school activity or school attendance.

§ 10605.1 Suspension of Order To Expel; Program for Rehabilitation

A governing board that has voted to expel a pupil may suspend the enforcement of such expulsion for a period of not more than one full semester in addition to the balance of the semester in which the board votes to expel and may, as a condition of such suspended action, assign the pupil to a school, class, or program which is deemed appropriate for rehabilitation of the pupil. In lieu of other authorized educational programs to which the pupil may be assigned, such school, class, or program may be offered as a community-centered classroom and may include experiences for the pupil as an observer or aide in governmental functions, as an on-the-job trainee, and as a participant in specialized tutorial experiences or individually prescribed educational and counseling programs. Such programs shall include an individualized learning program to enable pupil to continue academic work for credit toward graduation and shall qualify for state apportionment based on average daily attendance for only those hours in courses which earn credit for graduation and which conform to the provisions of Section 11251 of the Education Code.

At the conclusion of the designated period during which an expulsion action is suspended, the governing board shall: (1) reinstate a pupil who has satisfactorily participated in a school, class, or program to which such pupil has been assigned as a condition of the suspended action and permit the pupil to return to the school of former attendance or voluntarily to attend other programs offered by the district; or (2) if a pupil's conduct has been unsatisfactory, enforce the expulsion action previously voted by the board.

If the pupil is reinstated, the board may also take action to expunge the record of the expulsion action.

§ 10609. Expulsion Appeals to County Board

If a pupil is expelled from school, the pupil or the parent or guardian of the pupil may appeal, within 30 days following the decision to expel by the governing board, to the county board of education which shall hold a hearing thereon and render its decision.

The county board of education shall establish rules and regulations governing procedures for expulsion appeals pursuant to this section and not in conflict with Sections 10609.1 through 10609.4, including, but not limited to notice of filing such appeal, setting the hearing date, certification to the county board of the record of the proceedings at the district level, hearing procedures, and preservation of a record of the hearing.

§ 10609.2 Expulsion Appeals to County Board: Admissible Documentation

The county board of education shall determine the appeal from a pupil expulsion upon the record of the hearing before the district governing board, together with such applicable documentation or regulations as may be ordered. No evidence other than that contained in the record of the proceedings of the school board may be heard unless a de novo proceeding is granted as provided in Section 10609.3.

It shall be the responsibility of the appellant to submit a written transcription for review by the county board. The cost of such transcript shall be borne by the appellant except (1) where the appellant certifies that he or she cannot reasonably afford the cost of the transcript because of limited income or exceptional necessary expenses, or both; or (2) in a case in which the county board reverses the decision of the local governing board pursuant to subdivision (b) of Section 10609.3, the county board shall require that the local board reimburse the appellant for the cost of such transcription. The review by the county board of the decision of the governing board shall be limited to the following questions:

(a) Whether the governing board has proceeded without or in excess of its jurisdiction.

(b) Whether there was a fair hearing before the governing board.

(c) Whether there was a prejudicial abuse of discretion in the hearing, as such abuse of discretion is described in subdivision (b) of Section 1094.5 of the Code of Civil Procedure.

(d) Whether there is relevant evidence, which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board.

DAY TWO

LAWYER'S VISIT

Prior to the attorney's visit, copy and distribute the Day Two materials of the Student's Plan to the class. Have the students study the case that will be analyzed by the lawyer. Ask the students to study the following questions in preparation for discussion of the issues raised in the case.

THE CASE

Dwight Jones was a student at Central High School and was present in the lunchroom when a large number of students created a disturbance, causing significant damage to property in the lunchroom. This disturbance followed several weeks of unrest at the school and school officials were anxious to put an end to such unruly behavior. The principal asked the few teachers who were present in the lunchroom for the names of those students involved. Dwight Jones was among 75 students identified, all of whom were immediately suspended from school for a period of five days as a result of their alleged involvement in the lunchroom incident. Dwight maintains that he was merely an innocent bystander and took no part in the incident. However, he was never given an opportunity to present his side of the story, but was merely informed by the principal of the decision to suspend him.

One day following the incident, Dwight's parents were notified in writing by the principal of his suspension and were invited to attend a conference to discuss Dwight's future at the school. The fact of Dwight's suspension was noted in his permanent records and any colleges to which he might apply for admission or employers to whom he might apply for a job will be informed, pursuant to school rules, of the fact that he had been suspended in connection with the lunchroom incident.

QUESTIONS

A. Does a student have a right to some form of legal protections before he can be suspended from school? If he does have such a right, what form should such procedures take?

B. Who has an interest in the issues? Which of these issues are or should be protected by law? Why?

C. Do you think that a student has a right to some form of notice and a hearing before he can be suspended from school? Why?

D. Do you think that the school has deprived Dwight of any rights as guaranteed under the Due Process clause of the 14th Amendment to the Constitution which states that the state shall not . . . "deprive any person of . . . liberty or property without due process of law"? Should a principal have an absolute right to suspend a student for 10 days or less? Do you think that children are entitled to the same constitutional rights as adults? Why? Why not?

E. If you were the court, how would you resolve this case? Why?

FOLLOW-UP UNIT*

Divide the class into six or seven groups. Choose students in each group to represent the parties in each situation - student, parent or parents, teacher, school administrator and observer. Have each group prepare to act out a different one of the incidents described below. The observer should not participate in the preparation for the role-play.

While the simulations are being performed in each small group, the observer should watch what is happening and answer the following questions: Was the student treated fairly? Why? Why not? Were any constitutional rights violated? If a similar situation arose outside of school, would the action taken be unlawful? What was the attitude of each person in the skit? What motivated each person in the skit to act as he did? Was the role-play realistic?

After the role-playing is completed, students in each small group should discuss what happened with the observer acting as the leader. Following these discussions, those who had roles of students should lead off a general class discussion by describing the events that occurred in their group. This large discussion is the most important part of the entire activity and should not be rushed. At the final stage the instructor can serve as discussion leader.

CASE 1

Bill Haskins is a high school student who was reported to the principal for wearing his hair longer than school regulations allowed. Bill's parents, Bill and the teacher are called into the principal's office to discuss the matter.

CASE 2

Carol Stern had written an article on birth control for the high school paper. The journalism teacher referred the article to the principal who decided that it should not be printed. Carol complained to her parents who then made an appointment to meet with the principal and teacher.

CASE 3

James Collier wanted to discuss the possible presidential impeachment in the U.S. History class. The teacher refused to allow the discussion, and James challenged her decision. He was then reported to the principal's office for insubordination.

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* It is suggested that the teacher copy the article "Expulsion, Suspension and Corporal Punishment," on pages 26-27 of the Fall, 1974 issue of the Bill of Rights Newsletter from which role-play exercise is taken, and distribute the article to the class for study prior to the role-play.

CASE 4

The eleventh-grade class voted to hold a demonstration to protest a cutback in school funds for athletic programs by carrying signs in front of the school during lunch and after class hours. The class officers and the advisor meet with the principal to discuss the proposed demonstration.

CASE 5

The school librarian, fed up with the large number of overdue books, had the custodian open all the school lockers to retrieve library books that were overdue. In Nancy Lee's locker, the librarian noticed a packet of marijuana. He reported this to the principal. Nancy and her parents are called into the principal's office where the police are already discussing the matter with the librarian and the principal.

CASE 6

Steve Gertman's teacher reported Steve to the principal for talking in class for the fifth time in one week. The principal, on receiving the fifth report, called Steve into his office and announced that he is suspended from school pending a parent conference. Steve, his parents, the teacher and the principal meet to discuss the suspension.

CASE 7

Martha Martin had been caught smoking in the bathroom. She was brought into the vice-principal's office and paddled. Later that day, Martha and her parents meet with the vice-principal and teacher who found Martha smoking.

EXPULSION, SUSPENSION AND CORPORAL PUNISHMENT

Eighth and Fourteenth Amendment Rights

A few courts have been called on to analyze the constitutionality of corporal punishment under the Eighth and Fourteenth Amendments. In Sims v. Board of Education of Indep. Sch. Dist. No. 22 (329 R.Supp. 678), a student sued to stop the use of corporal punishment after he was paddled for taking a template from a crafts room. It was claimed corporal punishment violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment because it is summary punishment without an opportunity to be heard because it is arbitrary, capricious, and not reasonably related to an educational purpose, and because it caused substantial and lasting harm out of proportion to the gravity of the situation. The court answered that there is no due process violation because the purpose of corporal punishment is reasonably related to the purpose of promoting decorum in the schools and the effectiveness would be minimal if the school officials had to have formal proceedings before they could paddle a student. The court found no equal protection issue if some students are paddled while others are punished differently because each situation is unique. The punishment was also found not to be cruel and unusual because the physical harm is so slight. Another court, in Glaser v. Marietta (351 F.Supp. 555), upholding corporal punishment, said if the parents have the right to physically punish their children, then the same type of punishment cannot be constitutionally forbidden when used by a person to whom the right had been delegated. In addition, the due process requirements of notice and hearing had been met by the preliminary talk between the student and the principal before the punishment was administered. However, the court noted that, in this case, the mother did not want the principal to use corporal punishment on her child. Therefore, the school could not use corporal punishment on her son because it would violate her fundamental right to raise her child as she saw fit.

When a student is threatened with expulsion or suspension, he or she is entitled to the procedural due process protections or receiving notice of the charges and of an opportunity to be heard because a student has a protected interest in continuing his or her education. The question in cases involving expulsion or suspension is what specific protections are necessary. Should an attorney be present? Should one be appointed at state expense? Can students compel witnesses to appear on their behalf? What degree of proof is necessary before the school officials can take disciplinary action? Courts have always said that the requirements of due process differ with different situations, and in these cases, courts have not found the requirements of due process to be the same as the requirements in a criminal trial. Some states

have laws that specify the procedure to be taken before a student can be expelled or suspended. These laws provide how notice shall be given to the student and parents and how the hearing shall be conducted.

Some courts also find the constitutional requirements differ when it is a case of suspension rather than expulsion or when the period of suspension is long or short because less protection is necessary when lesser punishments are involved. As one judge said in Baker v. Downey City Board of Education, 307 F.Supp. 517, "the school officials were charged with the conduct of the educational program and if the temporary suspension of a high school student could not be accomplished without first preparing specifications of charges, giving notice of hearing, and holding a hearing or any combination of these procedures, the discipline and ordered conduct of the educational program and the moral atmosphere required by good educational standards would be difficult to maintain." However, a different court of appeals held in Betts v. Board of Education of City of Chicago, 466 F.2d 629, that even when the student admitted the wrongdoing, she was entitled to a hearing so that she could provide arguments on her behalf before she was given a punishment similar to expulsion, especially since the choice of punishments was within the officials' discretion.

The case of Deborah Lynn Cleaves in Hobson v. Bailey, 309 F.Supp. 1393, shows how these due process considerations can arise in school actions. Deborah, a class officer and an honor student, participated in a boycott of classes to rally support for a municipal employees' union and for N.A.A.C.P. efforts to obtain satisfaction of certain complaints about the Memphis school system. After missing four Mondays of school in October and November and participating in a walkout of classes on Tuesday, November 12th, Deborah was placed on "Home Suspension" for cutting classes and leaving school without permission. Deborah was notified that she had to return to school within three days accompanied by a parent to be readmitted to school. While on three-day suspension, she continued to support the Black boycott and appeared in demonstrations. At this point, Deborah and her mother went to the required meeting with her school officials but were told that Deborah had been placed on "Board Suspension" for picketing in front of the school. Deborah and her mother then went to the Board of Education, where they were told why she was suspended, that she would not be allowed to return to school and the alternatives open to her. After this meeting, Deborah participated in other protest and was arrested at one demonstration for disorderly conduct. The probation officer told her if she would agree to settlement out of court without a hearing, she could return to school. Deborah agreed, but was not readmitted, and other efforts to re-enroll her in her school were unsuccessful. Finally, in December, Deborah was given permission to enroll in one

of two other schools that had had no demonstrations. In January, Deborah and her attorney were granted a hearing. At that hearing, the board upheld its December decision, and Deborah and her attorney then filed suit. The court held that the Board suspension was justified by Deborah's regular and repeated absences from school which interfered with the educational processes, but that the discipline was not properly administered. At the time Deborah and her mother had the meeting at the Board of Education, Deborah was denied her constitutional rights under the Fourteenth Amendment because the nature of the charges were not explained to her, because the school official did not have Deborah's complete record before him, because there was no method of review provided as a matter of right, and because she was not told how to get a more complete hearing. However, the meeting in January did meet the due process requirements because Deborah had an opportunity to present a defense by being advised of the witnesses against her and by being able to present witnesses on her behalf.

INFORMATION FOR THE TEACHER*

The United States Supreme Court, in Goss v. Lopez U.S., 95 S.Ct. 729 (1975), examined the rights of public school students who were accused of misconduct for which they could have been suspended. Before these decisions, the lower federal courts had all agreed that if the punishment for misconduct was removal from school for a period of time long enough to be called expulsion, the Due Process Clause of the Fourteenth Amendment protected the students' rights. However, there was much confusion as to how long the removal had to be before the Due Process Clause applied.

In the Goss case, eight high school students and one junior high school student were suspended for 10 days during a time when there was a great deal of student unrest in their school district of Columbus, Ohio. Most of these nine cases involved some type of student demonstrations. In each case, the student was suspended without any hearing.

In deciding this case, the Supreme Court first recognized that the students' right to public education is a property interest, entitled to protection under the Due Process Clause. Even if the suspension is for as short a period as 10 days, the Due Process Clause still applies because suspension can have serious effects on the student's reputation with other students and teachers and could even effect his or her chances in getting into college or getting a job. The court concluded that the harm that a 10-day suspension can do is not so small as to make the protection of constitutional rights unnecessary. Also, by possible harm to the student's reputation could threaten the student's liberty by limiting his or her future educational and career choices.

Next, the Supreme Court had to examine what type of protection should be afforded the students. At least, the court said, a student should get "some kind of hearing" (emphasis in the original). The Due Process Clause's requirements are met if the student is "given oral or written notice of the charges . . . and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." The court later explained this by saying, "We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is . . . we stop short of construing the Due Process Clause to require countrywide that hearings in connection with short suspensions must afford the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge or to call his own witnesses to verify his version of the incident." The court also set out an exception to the requirement of Due Process protection in cases where the students are

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* Bill of Rights Newsletter, "American Schools in Crisis", Fall, 1975, Constitutional Rights Foundation

a continuing threat of harm to persons or property or of disruption to the school, but in those cases, notice and a hearing should follow as quickly after the suspension as possible.

Four of the nine justices disagreed with the opinion of the court. They had many criticisms of the majority's analysis. First they said enjoyment of a public school education is not a right within the Due Process Clause of the Fourteenth Amendment. Additionally, they wrote, a 10-day suspension is not a grievous loss that requires the protection of the Due Process Clause.

Secondly, the dissenters expressed the fear that the Due Process requirements will be harmful to the students and the schools. School authorities need discretion to operate the schools and even to make disciplinary decisions and the interests of the school officials and students are similar.

Lastly, the dissenters feared that the Supreme Court's ruling in the future will be applied in deciding issues of grading students, promotions, registration in required courses, exclusion from school activities and a host of other decisions that teachers and school administrators make. If this happens, courts, not lawmakers and educators, will be running the schools.

Shortly after Goss v. Lopez was decided, the Supreme Court extended students' rights in Wood v. Strickland, U.S. 95 S.Ct. 992 (1975), by allowing students who have been deprived of their constitutional rights to sue for damages. In this case the plaintiffs, three tenth-grade girls, were suspended by the school for "spiking" the punch at an extracurricular school meeting. Neither the girls nor their parents were present at the school board meeting. They were suspended for about three months.

In the past, courts had held that public officials, such as school board members, could not be required to pay money damages in civil rights cases because the fear of being sued and owing large money judgments could make the official too timid or cautious in carrying out his or her duties when bold action might be called for. With a five-four majority, the Supreme Court decided that there were limits on a school official's freedom from paying damages or immunity. When the laws of a state did not tell the school official exactly what to do, in other words, when the school official had a choice to make, the court could require him or her to pay damages in certain situations. First, if he or she actually knew that the action he or she was taking would violate a student's constitutional rights, then damages may be awarded the student. Secondly, if the school official did not actually know his or her actions would be unconstitutional but could

have been expected to know, damages can be awarded. Thirdly, whether or not the official knew or should have known the action was unconstitutional, if he or she were spiteful and wanted to deprive a student of his or her constitutional rights, damages can be awarded the student.

The majority believed their decision would serve the interests of the students by giving them some recovery for injuries caused by depriving them of their constitutional rights. However, it would not hinder school officials from fulfilling their responsibilities with a threat of liability for each and every action they took. Also, the limits on a school official's liability would benefit society because it would encourage qualified people to participate on school boards without threat of having to pay money damages to students.

Four justices disagreed with the majority. They said that the field of constitutional law is too uncertain. For this reason, it would be wrong to expect school officials to know the law and to make them liable if they do not know it. They felt that the standard the majority established is too strict and fewer qualified people will participate on school boards because of the threats of liability.

COURT SYSTEMS

There are essentially three ways to categorize our courts. First, there are trial and appellate courts. The job of the trial courts is to find the facts in the case and apply the law to those specific facts. All cases start at the trial court level. The appellate courts focus on the law involved in the case. They do not review questions of fact, which the trial court decides. Appellate courts decide whether the trial judge erred in his interpretation of the law, and thus a case may reach an appellate court only after it has been heard in a trial court.

The second distinction is between criminal and civil courts. In a criminal case (where accused has harmed society and government, representing society, brings a case against him), the government accuses a person of violating a law for which a penalty is provided. It seeks to punish the accused by depriving him of his life, liberty, or property. In a civil case, one may also be deprived of his property (and sometimes his liberty), but for a different reason. The purpose of a criminal trial is to punish the offender; that of a civil trial (one person against another--between private citizens) is to compensate one person for a loss caused by another. Common cases where such liability may be found are automobile accidents, sale of faulty merchandise, and failure to pay rent.

Third, there are both state and federal court systems. (See Chart on Court Structures.) The federal district courts are the trial courts for all cases arising under the laws and Constitution of the United States. State courts have jurisdiction over all cases arising at common law* and equity** as well as all cases under the laws of the states as enacted by their legislatures. Most cases, both criminal and civil, are brought in the state courts. Within the state court system there may be a number of different trial and appellate courts having jurisdiction, or authority, over different types of cases and cases of different degrees of importance. For example, in California trial courts, a case in a large judicial district will be brought in either the municipal court or the superior court. The superior court handles the

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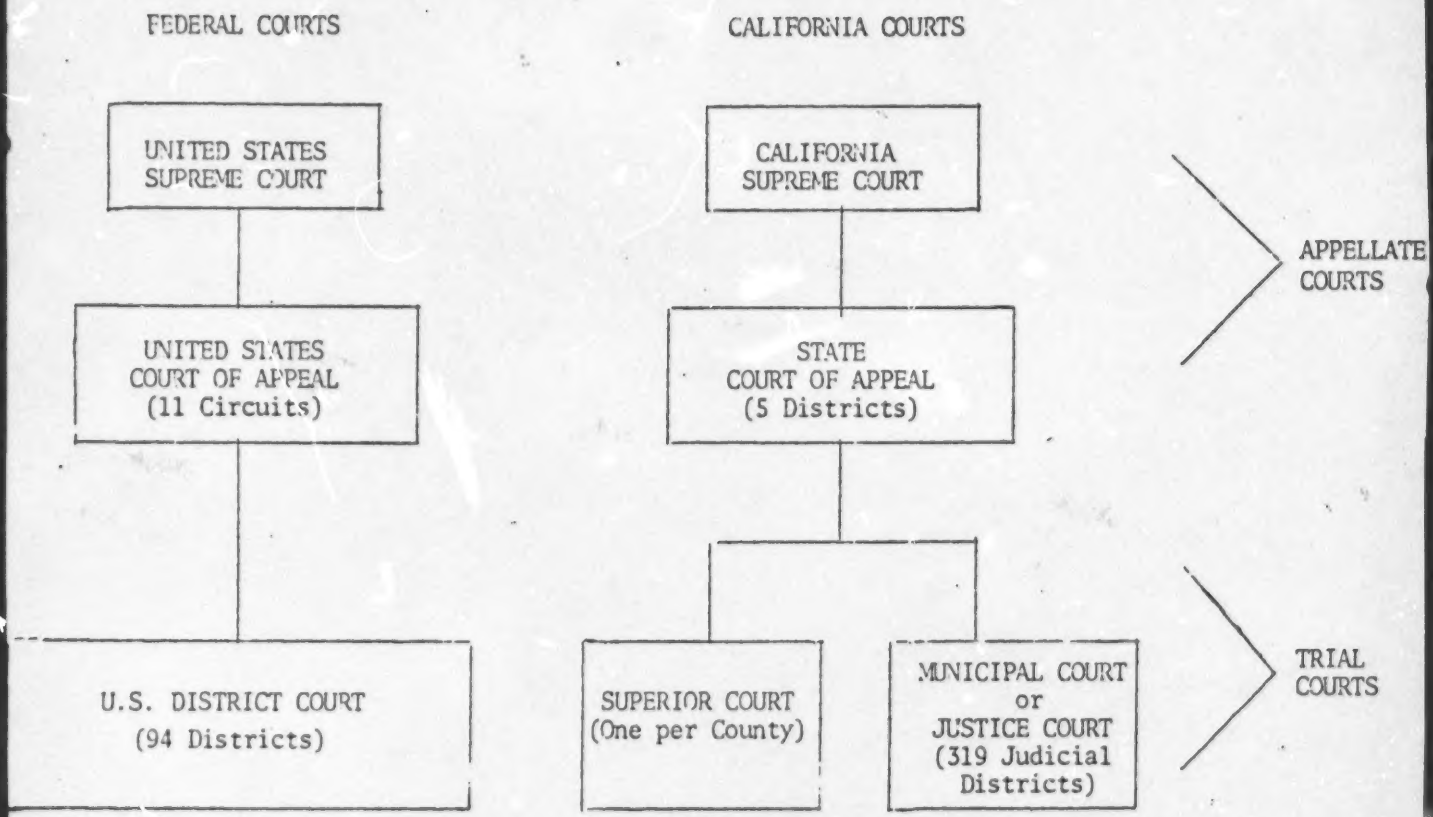
* Common law - Law that has its origins in England and grows from ever-changing custom and tradition. Judge-made law (as opposed to legislature-made law).

** Equity - A court's power to "do justice" where specific laws do not cover the situation.

more important cases--the felonies and civil cases involving over $5,000. But certain types of cases, such as divorce and probate, are brought only in superior court regardless of the amount in controversy. In the smaller judicial districts with a justice court instead of a municipal court, there is a similar division of the cases.

The federal court system has a similar structure. While there are a number of courts that handle only specialized matters, such as the customs court and tax court, most cases start in the federal district courts. Congress has strictly limited the types of cases that fall within the jurisdiction of these courts. One type is the diversity case where each party resides in a different state and the amount in controversy is over $10,000. The other type is a case involving a federal question, that is, one applying the federal constitution, statutes, or treaties.


FEDERAL COURTS
CALIFORNIA COURTS
UNITED STATES SUPREME COURT
CALIFORNIA SUPREME COURT
APPELLATE COURTS
UNITED STATES COURT OF APPEAL (11 Circuits)
STATE COURT OF APPEAL (5 Districts)
U.S. DISTRICT COURT (94 Districts)
SUPERIOR COURT (One per County)
MUNICIPAL COURT or JUSTICE COURT (319 Judicial Districts)
TRIAL COURTS

A SIMPLIFIED VIEW OF THE FEDERAL AND CALIFORNIA COURT STRUCTURES

"SPARE THE ROD"

Due Process Re School Discipline

A Lawyer Lesson Plan
Prepared by David Altschul, 1982

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LAWYER'S LESSON PLAN

Area of Law: Constitutional Law

Specific Topic: Due Process

Objective: To expose students to the concept of procedural due process* with particular reference to the Supreme Court's decision concerning due process requirements in the context of school discipline.

THE CASE

The case used in this fact sheet is based on the Supreme Court's decision regarding procedural due process requirements in a case involving the suspension of students from school for a period of 10 days or less. Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975). The students will be grappling with the same issues faced by the Supreme Court justices:

Dwight Jones was a student at Central High School and was present in the lunchroom when a large number of students created a disturbance, causing significant damage to property in the lunchroom. This disturbance followed several weeks of unrest at the school and school officials were anxious to put an end to such unruly behavior. The principal asked the few teachers who were present in the lunchroom for the names of those students involved. Dwight Jones was among 75 students identified, all of whom were immediately suspended from school for a period of five days as a result of their alleged involvement in the lunchroom incident. Dwight maintains that he was merely an innocent bystander and took no part in the incident. However, he was never given an opportunity to present his side of the story, but was merely informed by the principal of the decision to suspend him.

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* The Due Process Clause of the United States Constitution requires that no person shall be deprived of life, liberty or property without due process of law. The requirements of due process are regularly changed by the Supreme Court. They vary in detail from situation to situation, but the central core of the idea is that a person should always have notice and a real chance to present his or her side in a legal dispute and that no law or government procedure should be arbitrary or unfair.

One day following the incident, Dwight's parents were notified in writing by the principal of his suspension and were invited to attend a conference to discuss Dwight's future at the school. The fact of Dwight's suspension was noted in his permanent records and any colleges to which he might apply for admission or employers to whom he might apply for a job will be informed, pursuant to school rules, of the fact that he had been suspended in connection with the lunchroom incident.

QUESTIONS AND DISCUSSION

A. What are the major issues raised by the case?

Does a student have a right to some form of procedural due process protections before he can be suspended from school for a period of less than 10 days? If he does have such a right, what form should those procedural protections take?

B. Who has an interest in the issues? Which of these interests are or should be protected by law? Why?

The suspended student, the school, the principal, the other students and the students' parents all have an interest in the effectiveness and fairness of school disciplinary procedures.

The Supreme Court in its decision of this issue was only presented with and only considered the primary interests of the suspended student and the school itself. Indeed, it is unlikely that the Court would hold that any of the other parties have a protectable interest in the issue. In any case, their interests are essentially derived from and to an extent are identical to the interest of the student and the school. Thus, the student's parents share the same concerns as their child; they would want to insure that he not be unjustly punished for an incident in which he was not involved. On the other hand, the principal's interests would substantially be the same as those of the school itself. Finally, the other students would have conflicting interests: on the one hand, they would be concerned with the fairness of the procedures by which a student might be suspended because they themselves might someday be in a similar position; on the other hand, they would be interested in the effectiveness of disciplinary procedures because they might be adversely affected by the disruptive behavior of a single student or group of students.

C. What are the arguments supporting the interests of the parties involved?

1. The argument that a student has a right to some form of notice and a hearing before he can be suspended from school for a period of less than 10 days. (The Supreme Court limited itself to the 10-day period or less suspension because more than 10 days would require consideration of more procedures to protect students.)

   a. Is it fundamentally unfair to punish a person for an act which he has not committed. While it may be impossible to ever really know whether Dwight Jones was involved in the lunchroom incident, we can require the principal to employ a fact-finding procedure which will increase the likelihood that the truth will be uncovered. In this case, the procedure followed by the principal was deficient in that he totally relied upon the identification of Dwight by a teacher who may not have had an opportunity to carefully observe who was involved in the incident. The only way to insure that the factfinding process is fair is to inform Dwight of the charges against him and allow him an opportunity to present his side of the story. The Fourteenth Amendment to the Constitution guarantees all persons the right to be treated in this fundamentally fair manner. It provides that the state shall not "deprive any person of . . . liberty or property without due process of law". This amendment also applies to actions by local governmental authorities, including public shcools. While we normally think of property in more tangible terms, such as a house or a car, the Supreme Court has held that a state can create a "property" interest entitled to Fourteenth Amendment protection by providing a statutory right to a certain service. In this case, the state (Ohio) has established a school system and has guaranteed all students between the ages of five and twenty-one the right to a free public education. (Each state sets its own age guarantee for a free public education.) Thus, the state has created a right entitled to Fourteenth Amendment protection and a student cannot be deprived of this right, even for a relatively short period of time, without being afforded the protections inherent in the concept of due process.

   Suspending a student from school for a period of 10 days on charges of being involved in a serious disruptive incident in the school also adversely affects the student's interest in

"liberty" within the terms of the Fourteenth Amendment. The Supreme Court has held that state or local governmental authorities can deprive an individual of liberty by making charges against him which adversely affect his reputation and may influence his ability to obtain a job or further schooling. In this case, the principal of the school concluded without the benefit of a hearing that Dwight Jones was involved in a serious disruptive incident in the school. The fact of his suspension has been noted in his permanent record cards and will be reported to any college to which he applies for admission or any employer to whom he would apply for a job. Thus, Dwight's further freedom of movement or action has been affected by his suspension. The school should not be allowed to deprive Dwight of "liberty" without first providing him an opportunity to rebut the charges against him.

2. The argument that the school has a legitimate interest in suspending Dwight Jones for a period of 10 days without first notifying him of the charges against him and giving him an opportunity to refute those charges.

   a. The school has not deprived Dwight Jones of any interest in "property" within the terms of the Fourteenth Amendment. It is true that the state has created a right to education for children between the ages of five and twenty-one. However, the state also provided school administrators with the absolute right to suspend students for a period of 10 days or less without providing those students with any formal charges or an opportunity to refute the charges made against them. Thus, the state has, in effect, conditioned the right to a public education upon a principal's absolute right to suspend a student for 10 days or less. As the state is the authority which created the so-called "property" right, it can define the scope and nature of that right in whatever manner it chooses.

   b. There is no infringement upon any interest in "liberty" by virtue of the school's decision to suspend Dwight Jones for a period of 10 days. The Constitution only protects an individual against serious injury to his reputation. In this case, it cannot be said that Dwight Jones has suffered such an injury. There is no

substantial evidence that Dwight will not be able to attend college or will be denied future employment by virtue of his having been suspended for a period of only 10 days.

c. Education is a purely local matter and should not be subject to rules and restrictions imposed by the federal constitution. The federal government, through its court system, is interfering with the judgment of local authorities as to how best educate and discipline students.

d. The authority of teachers and principals could be seriously undermined if they were not allowed to act quickly and decisively in dealing with disruptive behavior. That authority is vital to the maintenance of school discipline and would be seriously undermined if every charge made by a teacher or principal against a student were subject to challenge and contradiction by the student being charged.

e. The relationship between student and teacher or student and principal should not be cast in an adversarial mold. In reality, the relationship of student and teacher is complex and requires the teacher to assume many roles, including educator, advisor, friend, and, at times, parent-substitute. Requiring notice and a hearing in disciplinary situations grossly oversimplifies and undermines this complex relationship by forcing student and teacher to deal with each other as adversaries.

f. Requiring the school administration to give every student notice and a hearing, either before or immediately after suspension, will place too much of a burden upon the school's limited resources. In this case, for example, 75 students were suspended. If the principal or some other member of the school administration were required to conduct a hearing for each one of those 75 students, it would be impossible for those officials to concentrate on running the school, which after all is their primary responsibility.

g. Children are not entitled to the same constitutional rights as adults. This is particularly true in the sensitive area of discipline in which adults, including those employed by state or local governments, must be given a freer hand to punish and thereby provide guidance for our younger, less mature citizens.

h. If a court were to decide that a student were entitled to a due process hearing before he or she could be suspended from school for a period of less than ten days on the basis that such a deprivation affected an interest in "liberty" or "property", it would be inevitable that future courts would have to rule that students were also entitled to hearings before other school decisions were made which affected their interests to an equal or greater extent. For example, a student who is college bound certainly has a significant interest in whether he or she receives an "A" or a "D" in a particular course. Indeed, it is not difficult to imagine that his or her ability to gain admission to the college of his or her choice may be more affected by the difference between an "A" or a "D" than the fact that he or she was suspended from school for a period of less than ten days. Yet, to argue that a student has the constitutional right to challenge a grading decision is patently absurd.

3. Courts traditionally decide due process issues in two phases:. first, they rule upon whether an individual is entitled to any due process protection under the circumstances of the case; and secondly, if the answer to the first question is affirmative, the courts then decide what form the due process protection should take.

It is becoming accepted doctrine that what constitutes due process differs in varying factual contexts. Thus, it would be appropriate to focus the class discussion upon what form due process protection should take in this case assuming that a decision is made that Dwight Jones is entitled to some form of due process protection.

The lawyer should focus upon the following list of those elements which have frequently been associated with due process hearings:

a. Notice of the charges - written or oral.

b. The right to have a hearing before an impartial third party. In this context, that might be somebody brought in from outside the school, or perhaps, a teacher who was not an observer to or involved in the incident.

c. The right to be represented by counsel, or, in the alternative, by a counsel-substitute.

d. The right to have a decision in the case decided on the basis of evidence presented at a hearing at which the accused is present. The evidence that is presented can be evidence other than that of the testimony of witnesses.

e. The right to cross-examine any witnesses presenting adverse testimony.

f. The right to present witnesses in one's own defense.

g. The right of the accused to testify in his own behalf.

What are the functions served by each of these elements of a due process hearing? Which of these elements should be included in the due process rights afforded a student facing suspension from school for a period of less than 10 days? In discussing this issue, the class attention should be focused upon the following factors: the magnitude of the potential deprivation faced by the student, the interest of the school in minimizing the administrative burden placed upon it, and the interest of the student in guaranteeing that a decision in his case be based upon an understanding and appreciation of all of the facts and circumstances.

4. Which arguments do the students find most persuasive and why? For a summary of those arguments the court found most persuasive, see the section "Decision in the Case" below.

a. Ask the students how they would feel if the situation involved them, or someone they like or dislike.

b. What effects, if any, would and/or should the following factors have in resolving the dispute or the problem:

(1) Prejudice;

(2) Sympathy;

(3) Relative needs of the parties; the needs of Dwight Jones and the state, as represented by the school, appear to have been factors in the court's decision, although they were discussed in terms of interest. Looking beyond that term, it

would seem that the court considered the student's needs to consist basically of preserving his or her right to remain in school and to be free of injuries to his or her reputation unless it is decided that he or she is actually guilty of wrongdoing after he has been provided an opportunity to refute the charges against him. The school's need to be free of a complex and protracted hearing procedure was recognized by the court in its decision to restrict a student's due process rights to notification of the charges against him and an opportunity to rebut those charges;

(4) Society's needs.

c. Ask the students how they would resolve the dispute or the problem and why.

RESOLUTION OF THE DISPUTE OR DILEMMA

The Supreme Court decided the case as follows:

The Court held that the suspension of a student from school for a period of ten days or less constituted both a deprivation of liberty and property. The property right involved was the right, created by state statute, to receive a free education between the ages of five and twenty-one. The involuntary deprivation of that right for a period of even one day constitutes a deprivation of property. This is true even though state statute grants school administrators the right to suspend students for a period of up to two weeks; the Court noted that such power granted to school administrators did not include the power to suspend a student arbitrarily or for no cause whatsoever. The Court also rejected the claim that suspension from school for a period of ten days or less is an insignificant loss that is not worthy of due process protection. The Court restated the standard that so long as the loss was more than de minimis (or insignificant), it fell within the requirements of the Due Process Clause.

The liberty interest which the Court found had been infringed upon in the case of a suspension from school for a period of ten days or less was the interest in not having one's good name, reputation, honor, or integrity placed in jeopardy by virtue of governmental action. In this case, the charges made against the student, if sustained and recorded, could seriously damage a student's standing with his or her fellow pupils and teachers as well as interfere with later opportunities for higher education and employment.

Having decided that a student could not be suspended for a period of ten days or less without being afforded some form of due process protection, the Court next considered what form that protection should take. As a basic minimum, the Court recognized that the concept of due process requires some form of hearing at which the accused can present his case. However, the Court recognized that the timing of such notice and the form of such hearing requires an appropriate accomodation of the competing interest involved. In this instance, the interest of the student is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences. The possibility of error in the fact-finding process is not trivial and thus some form of protection must be afforded to protect the students' interest. The interest of the school, on the other hand, is to minimize the disruptive effect which a complicated notice and hearing procedure might have upon the maintenance of school discipline.

After balancing these two interests, the Court concluded that the Due Process Clause and due process requires, in connection with a suspension of ten days or less, that prior to suspension the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities are relying upon and an opportunity to present his side of the story. The Court explained that it would not be necessary to provide a student with an opportunity to prepare his defense following notice. Rather, the Court envisioned that due process in this context would be extremely informal: a school administrator would orally tell a student what offense he was accused of having committed and the student would be entitled to explain his side or position on the matter. The Court explicitly rejected the suggestion that a student who was suspended from school for a period of ten days or less be allowed an opportunity to retain counsel, to present witnesses in his own defense, and to cross-examine witnesses presenting testimony against him. The Court recognized that to impose trial type procedures in each such case "might well overwhelm administrative facilities in many place, and, by diverting resources, cost more than it would save in educational effectiveness." 42 L.Ed. at 740. Finally, the Court recognized that in certain situations where, for example, the continued presence of a student in school constituted a danger to persons or property or the proper functioning of the academic process, it would be admissible to remove such a student immediately from the school and to provide him as soon as practicable thereafter with notice and an opportunity to respond to any charges against him.

The following hypotheticals are either based on issues explicitly left unresolved by the Supreme Court in its school discipline decision or are suggested by the dissenting opinions in that case. They are designed to stimulate the students' thinking, not to inform them of the present state of the law:

CASE 1

James Smith took a mathematics examination and received a failing grade even though all of the answers on his paper were correct. When he asked his teacher why he had received the failing grade, he was told that another student had reported that he had seen James cheating during the examination. The teacher was unwilling to listen to James' defense. Should James have been provided some form of due process protection prior to or possibly after receiving the failing grade and if so, what form should that due process protection take?

CASE 2

Robin Kennedy was a straight A student who received a C on a history examination. She fears that this grade will prevent her from being accepted into the highly competitive college of her choice. She shows her examination paper to her friend's father, who is a college history professor, and is told by him that her examination paper is brilliant and is deserving of A+. Her teacher refuses to tell her why he gave her such a low grade on the examination. Has Robin been deprived of any interest in property or liberty which would entitle her to due process protection? If so, what is the nature of that interest or interests? If she has suffered such a deprivation, what form of due process protection should she be entitled to?

REFERENCES

Statutes and court decisions pertaining to this area of the law are the following: Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975).

California statutory law pertaining to school disciplinary procedures: Ed. Code § 10601, et seq.

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